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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ROGER F., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER F.,

Defendant and Appellant.

F062003

(Super. Ct. No. JW124868-00)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Jon E. Stuebbe, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Ward A. Campbell and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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Roger F., a minor, was found by the juvenile court to have molested two children and to have committed related offenses against them. The court committed Roger to the Division of Juvenile Facilities¹ with a maximum confinement time of 13 years 8 months. In this appeal, he argues that none of the court's findings were supported by sufficient evidence. His contentions are based mainly on an attack on the credibility of the victims. We affirm.

FACTUAL AND PROCEDURAL HISTORIES

On August 6, 2010, the district attorney filed a juvenile wardship petition against Roger F. based on events that took place earlier that year when Roger was left alone with two children, identified in the record as John and Jane Doe. At the time of these events, Roger was 14 years old, John was 10, and Jane was 8. The petition alleged 12 counts: (1) kidnapping of John Doe with intent to commit rape (Pen. Code, § 209, subd. (b)(1));² (2) kidnapping of Jane Doe with intent to commit rape (*ibid.*); (3) rape of Jane Doe by threat (§ 261, subd. (a)(6)); (4) committing a lewd act by force or fear against John Doe, a child under 14 (§ 288, subd. (b)(1)); (5) committing a lewd act by force or fear against Jane Doe, a child under 14 (*ibid.*); (6) sexual penetration of Jane Doe with a foreign object (§ 289, subd. (a)(1)); (7) criminal threat against Jane Doe (§ 422); (8) criminal threat against John Doe (*ibid.*); (9) dissuading or preventing or attempting to dissuade or prevent a witness, Jane Doe, from testifying, by force or threat (§ 136.1, subd. (c)(1)); (10) dissuading or preventing or attempting to dissuade or prevent a witness, John Doe, from testifying, by force or threat (*ibid.*); (11) willfully causing or permitting a child, Jane

¹The California Youth Authority (CYA) was renamed Department of Corrections and Rehabilitation, Division of Juvenile Justice, effective July 1, 2005. The Division of Juvenile Facilities (DJF) is part of the Division of Juvenile Justice. (Gov. Code, §§ 12838, 12838.3, 12838.5, 12838.13.) DJF is referenced in statutes, such as Welfare and Institutions Code sections 731 and 733, that formerly referred to CYA. In this opinion we will use the name DJF.

²Subsequent statutory references are to the Penal Code unless otherwise noted.

Doe, to suffer unjustifiable physical pain or mental suffering (§ 273a, subd. (a)); and (12) willfully causing or permitting a child, John Doe, to suffer unjustifiable physical pain or mental suffering (*ibid.*).

The jurisdictional hearing began on November 8, 2010. Michelle S., the Does' mother, testified that she and her husband, Robert S., were friends of Roger's mother, Cara H. Michelle had known Cara and Roger for five or six years, and Robert had known Cara since childhood. On April 6, 2010, Michelle cleaned Cara and Roger's house. Roger asked if he could come back to Michelle's house with her and Michelle said yes. At Michelle and Robert's house, Roger played with John and Jane until Robert came home. Then Michelle and Robert went bowling, leaving John and Jane alone with Roger. They were gone for four and a half to five hours.

John Doe testified. During a voir dire examination, he said he knew it was wrong to lie, but that he had sometimes lied at school and to his parents to avoid getting in trouble. Later, he testified that he might lie to avoid disappointing someone, but would not lie to get someone in trouble. He also said that he and Roger had been friends for years.

John testified that after his parents left on the night they went bowling, Roger wanted to play Truth or Dare. Only Roger dared anyone to do anything. While the three of them were in John's bedroom, Roger took his own pants off and dared John to suck his (Roger's) penis. John refused and tried to leave the room, and Roger shoved him to the floor. John punched Roger in the leg. Roger kept the door shut and blocked the doorway with his body so John was unable to leave. Then Jane tried to leave and made it as far as the hallway, where Roger grabbed her by the shoulders. With his pants still down, Roger pressed himself against Jane's back, moving his lower body back and forth. This lasted less than a minute. Jane tripped and fell on the floor, landing on her back. Later in his testimony, John said Jane tripped because Roger had "pants'd" her. John testified that after Jane fell, "Something came out of Roger's penis," something that "was like water

but it was white.” Some of it landed on Jane’s foot. Roger went to the bathroom and wiped himself off.

According to John’s testimony, Roger then proceeded to Michelle and Robert’s bedroom and “started, like, going through their stuff.” In a Ziploc bag in a drawer, he found “two things made out of rubber,” one that “looked like a penis” and one that “looked like a small, like, circle thing.” (Michelle identified the items as a dildo and a penis sleeve.) Roger, now with his clothes on, held the dildo up to Jane’s crotch, “like where a boy’s penis would be if she were a boy.” At some point, Roger put his penis in the penis sleeve. John and Jane tried to get the items away from Roger, so Roger hid them under the bed.

Next, Roger shoved John out of the parents’ bedroom and closed the door and locked it with himself and Jane inside. A short time later, Jane and Roger emerged from the bedroom. Roger was naked. Jane was clothed and crying.

John and Jane went to the game room and began watching television. Roger, dressed again, came in after them. In the game room, on a stand, was a decorative knife belonging to Robert. Roger said “if we ever told anyone about it, he would stab us with it.” John was afraid that if he ever told anyone what Roger had done to them, he would stab them with the knife. Jane was still crying while this was going on.

About 15 minutes later, Cara came and picked Roger up. In his testimony, John answered yes when asked if Roger said he would “smash [Jane’s] face so hard she wouldn’t be able to see for a week.” Roger whispered this to John and Jane as he was leaving.

Jane Doe also testified. She underwent a voir dire examination and said she understood that it was wrong to lie. She also said she had never told a lie to avoid getting in trouble, but she might lie to keep a member of her family from getting in trouble.

Jane testified about the Truth or Dare game Roger wanted the three of them to play when they were in John’s room. She did not mention anything about Roger daring John

to suck his penis, however. Jane said yes when asked whether something “that was weird” happened in the hallway, but at first she did not remember what it was. Later, in response to leading questions, she testified that Roger took her pants off. Still later, in response to additional leading questions, she said Roger knocked her onto her back on the floor by pushing on the front of her body and some kind of liquid got on her pants. The liquid was white, and Jane answered yes when asked whether it came from Roger’s “boy part.” Contrary to John’s account, Jane said these events in the hallway took place after the events in the parents’ bedroom involving the dildo and penis sleeve.

Jane testified that Roger went into the parents’ room, pulled John and Jane in with him by their arms, and found two “skin colored” rubber things in a drawer. Roger touched Jane’s private part with the larger of these rubber things and touched John’s private part with the smaller one. Roger pushed John out of the room and closed and locked the door, leaving Jane and Roger alone in the room together. Jane did not remember what happened while she was alone in the room with Roger. She wanted to leave because Roger “was doing the bad stuff, looking through my parents’ drawers and everything.” Roger opened the door and let her out. She said her pants were on the whole time.

At another point in her testimony, however, Jane described a time when she was in her parents’ room with Roger and John, her pants were off, and Roger touched her private part with the larger of the rubber items, i.e., the dildo. It did not hurt. At yet another point, Jane said yes in response to the question, “And Roger somehow, while you were standing, was able to put the plastic pee-pee [i.e., the dildo] inside of you?” Jane said this did not hurt. Responding to a question about “how far it went inside,” Jane “indicated a space between her fingers about an inch.” Earlier in her testimony, Jane had said the dildo was not put inside her.

Jane testified that Roger threatened to hurt her and John. She identified two knives as decorative knives kept in her house, one kept in a curio cabinet in the living room and

one kept in the game room. Roger said he would kill John and Jane with them if they ever told anyone about what he had done that night. Jane testified that Roger left when his mother came to pick him up.

Michelle S. testified that John called her at 6:42 that night to say that Roger had left. Later that night, Michelle and Robert came home and put John and Jane to bed. Within the next day or two, Jane was “irritated” in her “vagina area.” The area was red and Jane said it felt itchy. The irritation lasted a few days.

Michelle and Robert went bowling again on April 27, 2010. When they got home, the dildo and penis sleeve were out on the floor of her and Robert’s bedroom. The children had gone to bed. Michelle woke them up to ask why the items were out, but they did not want to talk about it. The next day, however, April 28, John Doe told Michelle “that something had occurred when Roger was over at the house a couple weeks prior.” When Jane came home from school later, she confirmed the story. The children later explained that they had retrieved the sex toys from under the bed, where Roger had left them, and intended to put them back in their Ziploc bag and in the drawer. They were afraid their parents would find the toys under the bed and they would get in trouble. They were distracted before they finished carrying out this plan, and left the sex toys on the floor or on a stool in the bedroom, where Michelle found them.

According to John Doe’s testimony, before he explained what happened, his parents threatened to take toys and television privileges away from him over the incident. He said he did not want that to happen again. Jane testified that on the night the sex toys were discovered, her parents grounded her and John “until we told them the truth. And the next day we did.”

Michelle arranged a meeting at her house with Roger’s family. At the appointed time, Roger’s parents and grandmother drove to the house and stopped across the street, but then drove away without coming inside.

Five days later, on May 3, 2010, Michelle reported the facts to the police and took John to be interviewed at the sheriff's office. Deputy Aleasha Jackson interviewed John there that day. Jackson interviewed Jane Doe on May 7, 2010, at the family's house. Audio recordings of the interviews were admitted into evidence.

In the interview with Jackson, John described many of the same events he described in his testimony at the jurisdictional hearing. He said Roger pulled his own pants down and tried to "force me to suck his private part" while they were in John's bedroom playing Truth or Dare, and Roger shoved him down when he said no and tried to leave. He said Roger grabbed Jane by the shoulders and, with his pants down, pressed himself against Jane; he pulled her pants down and pushed her onto the floor, and "white stuff" came out of him and got on her. He said Roger pulled him and Jane into their parents' room, went through their drawers until he found the two sex toys, and held the "one ... [that] looked like a boy's private part" "up to where ... [Jane's] private part is." He pushed John out of the parents' bedroom and locked himself and Jane inside for a time and then let her out. Afterward, Roger said he would kill them with the decorative knives if they ever told anyone what happened.

John said some additional things during the interview with Jackson, things he did not mention in his testimony at the hearing. He said that, while the three of them were in his bedroom, Roger tried to make Jane suck his penis. He said Roger tried to press himself against him (John) while his (Roger's) pants were down, just as Roger had done to Jane. Roger grabbed John's hand, placed the penis sleeve in it, forced the sleeve onto John's penis, and tried to make John thrust himself against the bed while the sleeve was on his penis. In his testimony at the jurisdictional hearing, John denied that Roger made him put the penis sleeve on his penis, saying "I had it mixed up. I'm sorry."

John said that, while Jane was locked in the parents' bedroom with Roger, he heard Roger order Jane to get on the bed, and heard Jane say, "No, no." He said he heard Jane telling their mother that Roger had put the dildo inside her. Finally, John said

there had been many similar occurrences before, when Roger was watching John and Jane at Roger's house. Roger had watched them "a little less than 20" times beginning in 2007, and "every time he watches us he makes me try to, he forces me down and makes me try to suck his private part." Roger had never succeeded in putting his penis in John's mouth, however.

John described one occasion on which Roger pulled John's pants down and then pulled his own pants down "and tried uh humping me." The word "humping" was introduced into the conversation earlier by Deputy Jackson. On about five occasions, Roger had also done something to Jane; John did not specify what Roger had done. In his testimony at the hearing, John said there were only one or two occasions and he had made up the number five in his interview with Jackson.

Michelle was in the room when Deputy Jackson interviewed Jane. Jane said Roger locked her in her parents' bedroom with John outside. Asked whether anything went into her private parts, she said, "The fake [boy's] private part he stuck it in." It went in "[a] little bit." She told him to stop and he stopped. It did not hurt. She also said Roger "bended me down and tried to make me suck his peepee." She saw him do the same to John. In the hallway, Roger pulled Jane's pants down and pulled his own pants down and grabbed her by the shoulders. "[T]hen he tackled me to the floor and I was laying down and this white stuff came out" of "[h]is peepee." John told her it was called sperm. She said, "some got on my peepee right here." At the beginning of the interview, when asked why she was hesitant to discuss the matter, Jane said, "He threatened to kill us with the knives." Jane said she grew up knowing Roger, but the evening in question was the first time he had done anything like this to her.

John and Jane were interviewed again on May 14, 2010, by social worker Barbara Sager. Video recordings of the interviews were admitted into evidence by the juvenile court.

When Sager asked John why he came to the interview, he said, “Uh, we were sexually assaulted by a kid who ... was watching us one night” He said Roger made him and Jane “try to suck his front private part,” and also did what “Deputy Jackson ... described ... as humping [Jane].” After the latter event, Roger “threw [Jane] on the floor and white stuff came out of his private part and it landed on [Jane’s] private part.” In his testimony at the hearing, John said he only guessed Roger tried to make Jane suck his penis while they were alone in the parents’ room together; he had not seen this. John said Roger did similar things “every time he watches us which was like uh ten, nine or ten times in the past few years.” Most of this behavior was directed toward John; “he barely tries to do it to [Jane because] she’s younger.”

John described how Roger found the two rubber items in the parents’ room and made John put one on his penis and “go ... get on my parents’ bed and hump it.” Roger held the other one up to Jane’s crotch. After Roger locked John out of the parents’ room, John heard Roger tell Jane to get on the bed and heard Jane say no. Then he heard the bed creaking and a bang on the wall, and Jane ran out. In his testimony at the jurisdictional hearing, John said he made up the part about hearing Roger tell Jane to get on the bed and Jane saying no; immediately afterward, however, he said he had not made it up. Roger emerged naked and his penis was long and hard. He went into the bathroom and got dressed, and then found John and Jane in the game room, where he said, ““remember if you tell anybody about what happened tonight I’m gonna take the knives and kill you.””

John described an occurrence he did not mention in his testimony or his interview with Deputy Jackson: “He did one thing to me in the game room. He pulled my pants down and made me kneel like on all fours and he humped my back private part” Roger’s pants were down and his penis was touching John’s “butt crack.” Roger’s penis moved up and down along John’s butt crack. Roger said it felt good. “[H]e did it for about like five seconds and then I elbowed, elbowed him in the chest and he stopped.” In

his testimony at the hearing, John denied that this incident ever happened and even that he had ever told anyone it happened.

John described some of the prior incidents. When Roger's pants were off and Jane's shirt was on, Roger touched Jane's chest with his erect penis. Another time, he was in Roger's room. "He pushed [me] onto the bottom bunk and started humping my leg and that's with his pants down and he um, the white stuff came out and he went into his bathroom and wiped it off." John said that after each of the prior similar incidents, Roger also threatened them. Each time, Roger said, "'What did we do today?'" Jane would say, "'We played Truth or Dare,'" and Roger would say not to say that and would make some kind of threat. In his testimony at the hearing, John denied that the incident on the bottom bunk happened and said he did not remember telling it to anyone.

Sager asked John about the events that led to his parents' discovery of the sex toys left out in their room and his disclosure of Roger's behavior. John emphasized his wish to avoid punishment:

"I was, um, I was in my room and my parents they found—the night before that they had bowling and we had a babysitter and uh, the babysitter was watching TV and we went in our parents' room and they, we found, we were, we were looking under the bed cause that's where Roger hid the two things ... but we couldn't find the bag that they were in. So we had left them out not noticing that we left them out and my parents said they would take all of our stuff away, like our books, and I love my books, so couldn't let that happen so I told them why the, the um the things were out and that's when all this happened about dad calling them and then the, my mom called the police and everything and told them."

In her interview with Sager, Jane said Roger "made [John] bend down and he tried to make [John] suck his peepee." She said Roger "also threatened to kill us with my mom and dad's knives. Two knives." He grabbed Jane and John by their arms and pulled them into the parents' bedroom, where he looked through the drawers and found a thing that looked like "a boy's um, peepee" and another thing that he "put ... around his peepee" and then ran "around with his pants down." As he ran around, with his hands "[o]n his

peepee,” Roger said, “Fuck everyone. Fuck every adult.” Then he locked John out of the room and pulled Jane’s pants down. She said he “stuck” the rubber item shaped like a “boy’s private” “into my peepee.” He told her, “Put this in. Put it in. Put it in.” When it went in, he said, “Yeah!” She said no when asked if Roger “shove[d] it in hard,” but still it “kind of hurt” when he put it in. Then she told him to stop, and he took it out. When they were in the hallway, Roger was “humping” her, with his “peepee” touching her back and her bottom. He made her lie down on the floor. “[W]hite stuff” came out of him and landed on her. He went into the bathroom to wipe himself off, gave her toilet paper to wipe herself off, and said, “That was fun.” Jane said that, after Roger left, she and John told each other they “better not talk about it to the police or the parents.”

Sager tried to elicit information from Jane about how often various things had happened. She asked how many times Roger had been to her house. Jane said, “About a hundred.” She also said nothing similar had happened with Roger at her house any other time. Sager asked, “[H]ave you and [John] and Roger done anything in, in any other time or in any other house?” Jane said no, but then changed her mind and said, “[H]e always dares us to play Truth or Dare.” Sager asked how many times, and Jane said 39. Asked how many times this happened at her house, she said 20 times at her old house and once at her new house. Except for the last time, no one’s pants were down on any of those occasions. The last time also was the only time when Roger said not to tell anyone.

At the close of the People’s evidence, the prosecutor moved to dismiss count 1, kidnapping of John Doe with intent to commit rape, and count 3, rape of Jane Doe. The court granted the motion, saying the evidence was insufficient to sustain those charges.

The defense presented evidence of John Doe’s character for untruthfulness. Three teachers and two principals testified that John told lies.

One teacher said John “has difficulty with the truth and ... when accused of something, he will try to cast the blame on somebody else for some reason, that, you know, it wasn’t his fault or somebody did something to him to try to get himself out of

trouble.” An example she gave arose from an incident in which John wet his pants because the teacher refused to let him go to the bathroom. Michelle came to the school the following day and had a heated discussion with the teacher. The teacher claimed John falsely told his mother that the teacher had tried to talk to him about his mother’s behavior. This teacher also testified that she felt “threatened” because, in the courthouse lobby that day, as she sat with defense counsel, the family of the victims “were on a balcony overlooking us, looking at us, laughing at us, pointing, looking at us in not friendly ways.”

Another teacher gave as examples of John’s dishonesty that he would say he was not talking when she told him to be quiet or that he was working when she told him to work. Other times, she said, “I would know he was lying, but I couldn’t prove it.” She said, “[H]e’s very difficult, he’s manipulative, he’s not truthful.” She “hated coming to work” because of John. This teacher also testified that she was afraid of Michelle.

One of the principals testified that she also was afraid of Michelle because Michelle had once spoken angrily to her on the telephone after John had been suspended. The principal asked a sheriff’s deputy to come to the school because of her fear of Michelle. On another occasion, Michelle yelled at the principal in person and “used her height as an intimidation factor.” The principal also testified about the numerous entries in John’s discipline log.

The other principal testified that she felt intimidated that day because the victims’ family was “leering over at us over the balcony” in the lobby. Michelle had yelled at her and threatened to sue her in the past. That principal, who testified that John’s reputation was as “a continual liar about everything that had occurred,” gave as an example an occasion on which another child accused John of putting toothpicks in a keyhole and John denied it. She also said John “would say that people are picking on him and that he’s being harassed, when in turn it really was John Doe who was picking on them and harassing them.” She described one incident in which John claimed a school security

guard told some girls to pick on him. She had determined that this claim was false. She told another story in which an adult accused Jane of choking another student and Jane denied it to her mother. The mother called and said she believed Jane. The principal testified that she told Michelle she always takes the word of an adult witness over that of a child. Michelle hung up.

The defense presented evidence that John and Jane had been exposed to pornography and other sources of sexual information in their home. Three witnesses, Roger's mother Cara H., Cara's best friend Cherise S., and Cara's boyfriend Tyler H., testified that they learned from Michelle and Robert that John once found gay pornography on the internet and showed it to Jane. Cara and Cherise met Robert and Michelle at a restaurant in 2009. John and Jane were there. According to Cara, Michelle said Jane told her that John made her watch a video on a computer depicting "a man sucking another man's dick and ejaculating on him." Michelle found additional pornography web sites in the computer's browsing history. Cara and Cherise both heard Robert call John a "faggot" and a "queer" on this occasion. Cara said Robert "smacked" John on the head and told him to "sit in the corner and shut the fuck up." Cherise heard Robert say he "was going to beat the crap out of him."

Cara also said Michelle and Robert had been verbally abusive to their children for years, especially John; Robert often called John queer and faggot. Michelle and Robert also often called their children liars. Cherise testified that Michelle and Robert "were pretty open about talking about sex or toys ... around the kids all the time." Cara and Tyler once saw the television at Michelle and Robert's house tuned to the Playboy Channel. In 2009, Cara, Tyler, and Roger's grandfather, James W., learned that Michelle and Robert had removed John's bed frame from his room and confiscated all his books because they had found two Playboy magazines hidden under his bed.

Tyler, James, and Cherise all testified to Roger's honesty and good character. Cara testified that when she picked Roger up at Michelle and Robert's house on the evening of

April 6, 2010, John and Jane appeared content and showed no signs of fear of Roger. Cara, Cherise, and James testified that they never saw John or Jane exhibit any signs of fear of Roger and that they seemed to enjoy playing with him. On cross-examination, Cara testified about Roger's school disciplinary record. In 2008, he was suspended for injuring another student and again for causing some kind of disruption. On another occasion in 2008, he received detention for being disrespectful and eating in an area where eating was not allowed. In 2009, Roger was "counseled about kissing." In 2010, he was suspended for name-calling. Also in 2010, a teacher accused Roger of "removing computer parts."

Dr. Gary Longwith, a clinical psychologist, was privately retained to testify for the defense. Longwith also prepared a written report. He reviewed the recordings and transcripts of John's and Jane's interviews with Jackson, the deputy sheriff, and Sager, the social worker, and was asked to determine whether the interviewing techniques were improperly suggestive. Longwith found the interviews by Jackson to be "very loose," with "a lot of ego building" and "a lot of rewards" for "appropriate statements." He said Jackson asked leading questions and introduced information into the interviews.

The most important problem Longwith saw in John Doe's interview with Jackson was "the ego building. Deputy Jackson began to tell him how smart he was, based on the information she received from his mother, and how smart she thinks he is, and even asked him if he thought he was smart. So she began setting a high standard of expectation for the minor that he had to live up to." In addition, Jackson contaminated the interviews by giving rewards for answers. With John, "there were several times throughout the interview when he said something and she said, good. She praised him for it. She even said she would have done the same thing, which took it kind of outside the actual interview and made it personal." In Jane's interview, both Jackson and Michelle pressured Jane to provide expected information. Further, Longwith thought Jane's repeatedly expressed desire not to answer questions, and to have her mother answer them

instead, could be an indication that Jane felt she was being asked to say things that were not true. On cross-examination, Longwith admitted that “mortal fear” also could cause a reluctance to speak.

Longwith testified that Sager used proper interview techniques, but the problems with the Jackson interviews still tainted the Sager interviews. Longwith also perceived evidence that events between the two sets of interviews influenced the children’s testimony in the Sager interviews. The word “humping,” introduced by Jackson in her interview with John, was used by Jane in her interview with Sager. In her interview with Jackson, Jane said it did not hurt when Roger put the dildo in her vagina, but in the interview with Sager, she said it did hurt. Longwith believed these were signs that the children developed additional or different recollections between the two sets of interviews.

Longwith examined Roger. He administered a number of tests. The tests showed a normal sexual interest in adult and adolescent females, no pedophilic tendencies, and no evidence of sexual deviancy. Tests also showed no psychopathic tendencies, superior intelligence, no indication of dissimulation, and no elevated risk of violence or violent sexual behavior. The results of a personality inventory showed that Roger was well-adjusted. A malingering test showed no indication that Roger was being dishonest. Longwith concluded that all the results together suggested that Roger had no propensity to commit sex offenses against children. He found “a big inconsistency between what is being accused and what I see objectively in the testing data.” In his written report, Longwith characterized the behavior Roger was alleged to have engaged in as “bizarre.”

In his closing argument, defense counsel contended that John and Jane’s story was incredible. He hypothesized that John must have gotten the sex toys from his parents’ dresser and then needed a story to avoid punishment when the toys were found. Counsel claimed John fabricated the story of Roger’s offenses and recruited Jane to support it because he was afraid of punishments like those he had received for viewing pornography

in the past: loss of his books, name-calling, public humiliation, and threats of violence. Counsel argued that the details of the children's story could be explained by reference to the images John had seen. He emphasized the evidence of John's reputation for dishonesty and the inconsistencies in the several accounts the children gave of what happened.

He contended that there was evidence that the children were coached and their testimony was coordinated, and he emphasized the evidence of defective interviewing techniques. Counsel also stressed the evidence of Roger's good character and the exculpatory psychological evaluation by Dr. Longwith. The prosecutor, by contrast, pointed out that if the children's purpose was to avoid punishment after the sex toys were found, they could simply have accused Roger of getting the toys out and hiding them under the bed; the rest of the story would have been superfluous.

The court made detailed oral findings. It said, "[T]he credibility of all of the witnesses is a very large issue in this case, and analyzing that has been very difficult," and "what I've had to do is listen to the evidence with that in mind and consider what I am hearing, what I am not hearing, what of that evidence is believable and what of that evidence may or may not be believable. And so I've done that as carefully as I know how."

In John Doe's testimony, the court found "very significant inconsistencies and what I would call at least exaggerations, if not lies." Further, "Some of what John Doe said I'm convinced did not occur. Some of what he did by the second interview was exaggeration. I think he's given to doing that. I think his teachers told me that. There are times when he will straight out try to avoid trouble and there are times when he will just go off and get more and more fantastic." The court acknowledged that, because it believed some of John's testimony was false, it could disbelieve all his testimony.

It did not find all John's testimony false, however, partly because it believed Jane's corroborating testimony. In Jane's testimony, the court found "some elements ... that ...

were at least incorrect, perhaps exaggerated,” but no “attempts to mislead.” Her “testimony ... for an eight year old has been consistent and to the point throughout.” “So while I’m not throwing out everything John Doe said by any means, I have a consistent witness, even if I ignored everything he said, and that consistent witness, it seems to me, reports not only consistently but actually rather accurately in most regards.”

The court was convinced, in particular, by Jane’s testimony about Roger penetrating her with the dildo:

“In her original transcript of the interview with Ms. Jackson—with Deputy Jackson, she made clear distinctions in terms of the situation when something was forced inside of her. She brought the subject matter up. She brought the conversation back to it because that was something that she felt she needed to say. She was asked about it, but she clearly said that, and she said it in a way that was very interesting, because she was asked whether anything was put inside her, and she said, other than that fake boy thing. I’m paraphrasing. The exact language is in there. She brought that back and drew that distinction between anything else and that and then answered clearly, yes, it was and went on and talked about how much and all of that sort of thing.

“So in terms of her testimony, then, and to Ms. Sager and to here, it was interesting on how many occasions she would be able to do something like that. She would bring it back and say, well, no, not any of that, but this. She was very clear about that.”

The court thought it was implausible that this penetration would have been said to have happened outside of John Doe’s presence if the whole story had been fabricated:

“I do find it interesting that she was the only witness at part of the events, because John Doe was outside the room. That’s the testimony. If this were a made-up story, it seems—and from that perspective, the whole thing is made up, if I’m to believe this is a made-up story, then I have to believe that absolutely nothing happened that day in that house, not a single thing. No kidding, no touching, no pushing down or running around or looking in drawers. Nothing. Either it happened or it didn’t happen, because the sex acts were all intertwined. It is interesting that the story that then got told puts John Doe out of the room at the critical element of the penetration.”

The court was also impressed by one of the details:

“The other part of the story line that makes no sense, absent it being accurate, is the Ziploc Baggie. I just—it’s fascinating that the toys they said were left there for three weeks and eventually they decided to try to put them back and they couldn’t find the baggie, and one thing led to another and there was the discovery. The absence of the baggie is such an interesting tiny, little fact, one of those strange little things that isn’t going to be part, in my experience, of the fabricated story. It just doesn’t make any sense. An eight and a ten year old don’t come up with a missing Ziploc Baggie.”

Taking account of all the evidence, the court “reached a conclusion beyond a reasonable doubt, that the events as described by the minors did occur and they did occur that night.” It found not true count 2, kidnapping of Jane Doe with intent to commit rape, but found true the lesser-included offense of false imprisonment (§ 237, subd. (a)). It also found not true count 4, committing a lewd act by force or fear against John Doe, but found true the lesser-included offense of attempting a lewd act with John Doe (§§ 288, subd. (b)(1), 664). It found true counts 5 through 11 (lewd act against Jane Doe; penetration of Jane Doe; criminal threats against John and Jane; attempting to dissuade John and Jane from testifying; and causing unjustifiable physical pain or mental suffering to Jane). It found not true count 12, causing unjustifiable physical pain or mental suffering to John.

Roger filed a motion for a new jurisdictional hearing. He argued, among other things, that he would be subjected to lifetime residency restrictions as a sex offender under sections 290.008 and 3003.5, subdivision (b), and that the punitive nature of this sanction entitled him to a jury trial. The court denied the motion.

Before the dispositional hearing, Roger submitted 29 letters of support from friends, family members, adult leaders of his 4-H group, and others. The letters generally expressed the view that Roger was a responsible, kind and trustworthy young man, and that it was inconceivable that he could have committed the offenses the court found he committed.

Roger also submitted a new psychological evaluation by Eugene T. Couture, Ph.D. Couture wrote that Roger began to have symptoms of Attention Deficit Hyperactivity Disorder (ADHD) before the sixth grade and was taking Strattera for this condition. There also was “a previous diagnosis of Oppositional Defiant Disorder, but his history does not seem to bear that out, and it was not continued forward in his medical records” Couture administered a personality inventory and found indications of anxiety. He attributed this to “the fact that [Roger] ... has been convicted and is now expecting some type of lengthy punishment.” Couture concluded that Roger “has no major mental disorder” and “no diagnosable sexual disorder.” Although he had “the usual inattention and irritability that goes with” ADHD, he has had only minor behavior problems at school, “[n]one [of which] ... has been of any import.”

Roger attended public schools until his arrest at the beginning of his ninth grade year, except that in seventh and eighth grades his mother voluntarily placed him in an independent study program because he had begun to receive failing grades. In the independent study program, he received A’s and B’s.

Roger told Couture he did not commit the offenses. He said, ““I have a clear conscience[.] [T]he kid[s’] stories change, but I’ve always said that I didn’t do any of this[.] [N]o one believes me now, so I have to go to treatment, but I didn’t do this.”” Roger also said he had essentially no sexual experience. “Except for kissing and light petting, he denies any sexual contact,” Couture wrote. He had seen pictures of nude women, but no pictures of sexual activity. He told Couture he believed the children accused him to avoid being in trouble for playing with their parents’ sex toys. Couture wrote, “I will say that [Roger] was believable in his denials and did seem to respond as a 14 year old with little sexual experience.” Couture described Roger as a “bright, well-spoken young man” and a “very pleasant young man.”

In light of Roger's medical and school records and the examinations and tests administered by himself and Longwith, Couture recommended that Roger be placed at home:

"I would suggest that [Roger] appears perfectly suited for placement in the community. This is a young man who has never been in any previous trouble with the law; even his offenses at school have been fairly low-level and non-violent. He was not expelled from school, but voluntarily moved into the alternative school It must be clear that he was not moved there due to behavior problems, but due to his mother's desire that he catch up on credits so that he could graduate from school. This strategy worked and he was able to graduate from the eighth grade and move into high school. He took summer school during his eighth grade to freshman summer and received 'A's' and 'B's' in the classes. With the steady use of Strattera for ADHD, he appeared to be reintegrating back into the mainstream school system without difficulty. There is absolutely no previous behavior that would suggest that [Roger] requires incarceration to control his behavior in the community. [¶] ... [¶] ... I believe ... that [Roger] would be an appropriate candidate for placement back in his mother's home. There are no other children in the home. The grandparents are available for supervision during the mother's work day. He would have access to appropriate therapeutic intervention through the Kern County Mental Health System of Care. There is no evidence of drug or alcohol abuse and no evidence of any other adolescent acting out. I cannot see any good reason to place him in a totally secure facility, such as those maintained by the Department of Corrections and Rehabilitation, Division of Juvenile Justice. [Roger] has no history of violence or gang membership. Unfortunately, in a highly secure facility, such as DJJ operates, he would have no choice but to learn an extensive series of criminal behaviors, which he does not now exhibit. It is my opinion that this would be a highly negative outcome, both for him and for the rest of us.... One of the other problems with placement at DJJ, is that they will not administer to him a stimulant medication, such as [Strattera]. This would result in a clear set back for him on [an] academic basis, as he would no longer be able to receive medication appropriate to control the [effects] of ADHD."

The probation officer reported that Roger denied that he molested John and Jane Doe and believed they had fabricated their account to avoid getting in trouble over the sex toys. He expressed a hope that he could return to his mother and "was especially concerned regarding the possibility of being physically separated from his mother for an

extended period of time.” The probation officer’s report focused on Roger’s denial of guilt and concluded that this denial meant there was no alternative to a commitment to the DJF:

“The minor refuses to take responsibility for his actions. He does not admit what he did to his victims and he has no empathy at all for his victims. They are nothing more to him than liars. Although he states he is willing to participate in counseling, it is clear he sees no need to participate in juvenile sex offender counseling and no need for treatment. He cannot and will not admit his offenses, he will take no responsibility for his actions, and has no remorse or regret for what he has done to his victims. He has no desire or motivation to change or modify his behavior. It is this officer’s belief the minor must be considered a significant threat to the safety and welfare of his two victims and to any child in his community. The minor is in dire need of intensive individual and group juvenile sexual abuse offender counseling, but unfortunately, given the minor’s current position of denial, the chances for the minor’s success in treatment are limited, at least until such time [as] the minor becomes willing to acknowledge his actions, accept responsibility for what he did, express remorse and regret, and acquire empathy for his victims.”

The probation officer’s report discussed local programs and group-home-based programs, but concluded that Roger required “a higher level of security and safety,” and that he would be ineligible for these programs in any event because he denied guilt. The report recommended that Roger be placed in one of the two residential sex offender treatment programs operated by the DJF.

The court accepted the probation officer’s recommendation and committed Roger to the DJF. It found that continuing to live at home would be contrary to his welfare, that local programs would be ineffective, and that it was probable that placement with the DJF would benefit him. It found the maximum confinement time to be 13 years eight months. It stated that, upon release, Roger would be required to register as a sex offender but would not be subject to the lifetime residency restrictions.

DISCUSSION

Roger's only argument on appeal is that the evidence presented at the jurisdictional hearing was not sufficient to support any of the charges the court found true. Like his trial counsel, Roger's appellate counsel emphasizes the evidence against the Does' credibility, the inconsistencies in their accounts of the facts, the evidence supporting Roger's good character, and the psychological evidence supporting Roger. He also asserts that the testimony of the Does was inherently improbable.

"When an appellant asserts there is insufficient evidence to support the judgment, our review is circumscribed. [Citation.] We review the whole record most favorably to the judgment to determine whether there is substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof." (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.) "We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility. [Citation.]" (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

We acknowledge that this case was no easy one for the trier of fact. John's and Jane's accounts contained numerous inconsistencies, and John had a reputation for dishonesty affirmed by multiple witnesses. Roger had no record of this kind of behavior, multiple witnesses testified to his honesty and good character, and there was expert opinion that he had no propensity to molest children. There was no physical evidence that the molestations happened, except for Jane's transitory redness as reported by her mother. John and Jane had a motive to lie about the sex toys.

The juvenile court was well aware of these features of the case. It considered them carefully and made determinations on the record about the credibility of witnesses and the weight of testimony. In the end, taking account of all the evidence, it found that the main features of John's and Jane's accounts of events were credible.

To reverse in this case, we would have to discard the trial judge's findings on the credibility and weight of the evidence. We cannot do this, for there is nothing inherently incredible or impossible about the events the court found true, contrary to Roger's contention.³ It is not enough that the facts the court found might have been highly unusual, that the accused's behavior might have been out of character for him, that there were substantial conflicts in the evidence, or that the witnesses the court relied on were impeached. The weight of all those matters was for the trial judge to determine, within the bounds of reason.

“To warrant the rejection by a reviewing court of statements given by a witness who has been believed by the trial court or the jury, there must exist either a physical impossibility that they are true, or it must be such as to shock the moral sense of the court; it must be inherently improbable and such inherent improbability must plainly appear.’ [Citations.] It also is true that uncertainties or discrepancies in witnesses’ testimony raise only evidentiary issues” to be resolved by the finder of fact. (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1259.) Under the circumstances of this case, basic appellate principles bar us from discarding the juvenile court's findings. The testimony of John and Jane was substantial evidence on the basis of which the court could find the allegations true beyond a reasonable doubt.

³In his reply brief, Roger's appellate counsel writes, “If this Court finds the fabricated story of these unreliable, untruthful, dishonest children, to not be ‘inherently improbable’ or ‘impossible of belief,’ then so be it.”

DISPOSITION

The judgment is affirmed.

Wiseman, Acting P.J.

WE CONCUR:

Cornell, J.

Kane, J.